

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 18, 2012

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, May 18, 2012.

Members present were: Louis Stout, Chair; Jim Griggs, Barry Stumbo, Kathryn Moore, Jan Meyer and Thomas Glover. Noel White was absent. LFUCG staff members in attendance were Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Planning Staff members in attendance were Jim Marx, Wanda Howard, Jimmy Emmons and Bill Sallee.

- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the December 16, 2011 and April 27, 2012 meetings would be considered at this time.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (White absent) to approve the minutes of the December 16, 2011 and April 27, 2012 meetings.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **C-2010-20: INNER CITY BREAKTHROUGH MINISTRIES** - the Board of Adjustment has requested a revocation hearing for failure to comply with conditions imposed when the applicant was approved as a church in March 2010, in a Wholesale and Warehouse Business (B-4) zone, on property located at 824 Winchester Road (Council District 5).

In March 2010, the Board approved a conditional use permit for a church at this location, subject to several conditions. The conditions imposed by the Board, which are under review, consist of the following:

1. The church shall be established in accordance with the submitted application and revised site plan dated March 25, 2010.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to beginning the church use.
3. Sanctuary seating shall be provided for no more than 30 persons within this building.
4. The proposed landscape buffer at the northwest corner of the property shall consist of at least one small tree and shrubs, designed and installed in accordance with the recommendations of the Landscape Examiner with the Division of Building Inspection.
5. A shared parking or lease agreement for four off-street parking spaces at 911 Dayton Avenue shall be obtained, subject to review and approval by the Department of Law and the Division of Building Inspection. Said agreement shall include a survey or other documentation that the boundary of 911 Dayton Avenue includes the four parking spaces at the rear of that lot, as depicted on the revised site plan dated March 25, 2010.

Representation – Mr. Ed Dove, attorney, was present on behalf of Inner City Breakthrough Ministries and the Catholic Action Center. Due to the severity and importance of this issue, Mr. Dove requested a postponement of this case so they could have time to be prepared for all issues.

Discussion – Chairman Stout asked the staff if they had any comment about this request. Mr. Emmons

said that there were several persons present to speak to this request, but that the staff was prepared to proceed on this matter.

Mr. Glover asked Mr. Dove if there were any grounds for this postponement request. Mr. Dove replied that he had just been retained to represent his clients. He had also just begun to work with the Lexington Fair Housing Council – a group investigating a complaint which needs some further consideration. Mr. Dove said it was his hope that the matter could be resolved without the need for a hearing before the Board. He said that this case involves a big issue that would affect a lot of people, and he felt it important to be fully prepared.

Mr. Glover asked if Mr. Dove had conversed with the staff about the request for postponement. Mr. Dove replied that he had spoken with Ms. Boland in the Department of Law, but that he had not spoken with the planning staff. Mr. Emmons clarified that the staff did not have a recommendation on the request for postponement, but that if the Board wished to proceed, the staff was ready to do so.

Mr. Griggs asked what dialogue had occurred between the Division of Code Enforcement and the Catholic Action Center regarding this location. Mr. Griggs also asked why an attorney had just been hired, as this could seem to be a delaying tactic. Mr. Dove said that his request was not a delaying tactic, but that the issues raised by the planning staff (in their report) were serious. He hoped that the postponement would allow time for dialogue between his clients and the staff.

Mr. Griggs asked the staff if the revocation hearing was threatened for some time or only in the past month or so. Mr. Marx replied that, with respect to the Division of Code Enforcement, they had not been involved. The Division of Fire had been involved with this property, ensuring that their requirements had been met, as a result of the type of occupancy that had been in this building. Mr. Marx said that there had been ongoing conversations for several months about this property. There were different routes that could be taken, as spelled out in the staff's Supplemental Report, which had been distributed to the Board.

Chairman Stout asked if the staff was opposed to a 30-day postponement of this case. Mr. Marx replied that the staff was not opposed, but that there might be the need for a special hearing for this item, as the June meeting already looked to have a full agenda.

Chairman Stout asked for those present in opposition to the church to stand, and soon after, for those in favor to stand. Several persons stood at the appropriate times. Chairman Stout said that the Board should determine whether or not a postponement should be granted at this time.

Mr. Griggs suggested that the Board consider scheduling a special meeting for this matter. Ms. Meyer agreed that a special meeting should be held.

Ms. Moore asked Ms. Boland if she had any suggestions or comments. Ms. Boland replied that Mr. Dove did call her to inquire about the possibility of a postponement. She explained that this decision was entirely up to the Board.

Action – A motion was made by Mr. Glover, seconded by Mr. Stumbo, and carried unanimously (White absent) to postpone **C-2010-20: INNER CITY BREAKTHROUGH MINISTRIES** for 30 days, or to a special meeting, at the pleasure of the Board.

Discussion – Mr. Dove asked what date the revocation hearing would be held. Ms. Meyer replied that the motion was to grant a postponement for 30 days, or to a special meeting. She said that she favored scheduling a special meeting for this case.

Action – A motion was made by Ms. Meyer to schedule a special meeting to consider **C-2010-20: INNER CITY BREAKTHROUGH MINISTRIES**.

Discussion – Mr. Griggs said that he liked the idea of holding the hearing at either the June meeting of the Board, or at a special meeting. Chairman Stout said that the Board needed to determine whether to schedule a special meeting. Mr. Griggs thought that the staff and the representatives of the church could do so, depending upon the number of applications filed for the June meeting.

Mr. Glover said that he had hoped the Board would discuss whether or not to postpone the matter, and then, to consider whether to hold a special meeting. He said that he did not have strong opinions about whether or not to schedule a special meeting. He felt it was more of a scheduling matter; but that it would be good to know what had been filed for the June meeting, and what dates might be available for a special meeting.

Chairman Stout thought that this should be postponed to the regularly scheduled June meeting; otherwise, there would need to be some polling to determine which members could be in attendance.

Ms. Meyer said that this was an important issue that might need some time to fully consider all issues.

Chairman Stout asked Ms. Boland about the motion on the floor. Ms. Boland said that Ms. Meyer's motion was not in conflict with the original motion that passed, as there was an "either/or" provision in that action. In the absence of a second motion, she felt the Board would need to hold this hearing on June 29th. Chairman Stout said that he was not sure of what alternate dates in June might be available.

Mr. Glover said that it might be helpful for the Board to learn how long each side expects to take in presenting their information in this case. He noted that several persons stood earlier on each side of this case.

Chairman Stout said that he felt the Board would need additional time at the next meeting, as there would be even more people in attendance to speak to the Board. He said that June would be a very busy month for him, and that he had scheduled some time off in July. He said that he did wish to be present, but he was unsure of an available date.

Ms. Meyer said that three of the members would not be present at the June 29 meeting, and she wondered aloud whether the Board would even have a quorum that day. Chairman Stout said he understood the desire to schedule a special meeting for this appeal.

Mr. Stumbo said that he also would not be present for the June 29 meeting, and he would be in favor of a special meeting sometime in mid-June.

Ms. Boland said that the Board should determine the "date certain" to postpone this item and that it should not be left up to the staff. Ms. Meyer suggested June 22nd for the special hearing. Chairman Stout replied that he would be out of town that day. Mr. Stumbo suggested June 15th for the meeting. Chairman Stout replied that Ms. Moore would need to chair the meeting that day. Ms. Moore replied that she, too, was unavailable to attend that day.

Chairman Stout asked Mr. Dove if he would be agreeable to postpone this matter until July. Mr. Dove replied in the affirmative. Mr. Stumbo asked which was the regularly scheduled meeting date in July. Mr. Sallee replied that the normal meeting day for the Board is July 27th. Chairman Stout replied that he would not be in attendance that day, due to a scheduled medical procedure.

Mr. Marx asked if Friday, June 8 could be a possibility for a special hearing. Mr. Sallee said that the staff could check on the Chamber's availability, but generally the Chambers were often available on Friday afternoons.

Chairman Stout asked Mr. Dove if June 8 was an acceptable date. Mr. Dove replied in the affirmative, provided the Board scheduled the meeting to begin at 1:30 instead of 1:00 PM. Chairman Stout said that if it was held on June 8, he would ask that the meeting begin at 1:30 PM. Mr. Dove thanked the Chair.

Ms. Meyer's motion died due to the lack of a second.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (White absent) to schedule a special meeting date for June 8 at 1:30 PM for **C-2010-20: INNER CITY BREAKTHROUGH MINISTRIES.**

Chairman Stout asked the staff to be sure to send the proper notifications about this meeting.

- b. **C-2012-28: BRENDA TOLLETT / BVC HOLDING, LLC** - appeal for a conditional use permit for an indoor/outdoor recreational facility in a Light Industrial (I-1) zone, on a portion of 709 Miles Point Way (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Although there are topographic and tree preservation issues to be addressed, this site is large enough to accommodate the proposed indoor volleyball recreational facility.
- b. All necessary public facilities and services, including police, fire and EMS, are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The indoor volleyball facility shall be constructed and operated in accordance with the submitted application and site plan, or as amended by the Planning Commission via a Final Development Plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
3. This property shall comply with the Old Frankfort Pike Landscape Ordinance.
4. Any food service provided shall remain accessory (i.e., incidental and subordinate) in nature, shall be only for participants and employees of the facility, and shall be subject to review and approval by the Fayette County Board of Health.
5. A plan for storm drainage and retention shall be submitted to, and accepted by, the Division of Engineering.
6. The parking area, as well as access and all internal circulation, shall be subject to the approval of the LFUCG Traffic Engineer.
7. The parking area shall be paved, with spaces delineated, and screened/landscaped in accordance with Articles 16 and 18 of the Zoning Ordinance.

Representation – The applicant was not present for this appeal. Mr. Sallee stated that he had attempted to reach the appellant by phone, but had to leave a message for her.

Discussion – Mr. Stumbo said that he was not comfortable approving a conditional use permit for someone not present to agree to the conditions associated with the use. Mr. Glover agreed with Mr. Stumbo, saying that the appellant should have appeared. Ms. Moore suggested that the Board consider the disposition of this case toward the end of this meeting. The Chair agreed to consider this case at that time.

Note: Following disposition of **V-2012-31: CAMPUS RENTAL PROPERTIES** (below), the Board returned to this case.

Chairman Stout asked if the staff had heard yet from the appellant. Mr. Sallee replied that Ms. Tollett had not returned his phone call. Since the appellant was not present, he recommended that the Board postpone consideration of this item until the June 29th meeting.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (White absent) to postpone **C-2012-28: BRENDA TOLLETT / BVC HOLDING, LLC** to the Board's June meeting.

2. No Discussion Items - The Chair asked if there are any other agenda items where no discussion was needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board would proceed to take action.
 - a. **V-2012-27: BALL HOMES, LLC** - appeals for a variance to reduce the required 25-foot distance from the floodplain to 12.5 feet in order to construct a single family residence in an Expansion Area Residential (EAR-1) zone, on property located at 3829 Castlebridge Lane (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties, as the location of the proposed duplex is about 50' from the floodplain as approved by FEMA on Conditional Letter of Map Revision (CLOMR) case #09-04-8336R; and all of the necessary floodplain improvements between Hayes Boulevard downstream to the regional detention basin are complete and functioning properly, as per the approved CLOMR.
- b. The proposed structure is not located in the regulatory floodplain.
- c. Upon completion of all of the stormwater improvements within the 500+ acre Gess Development, and approval by FEMA of the final Letter of Map Revision (LOMR), this requested floodplain setback variance will no longer be necessary. Thus, there would be no circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would create an unnecessary hardship for the appellant, since a client has chosen this lot and the issuance of the LOMR appears to be some time in the future.
- e. The variance is not the result of the appellant's actions, as the possibility of this variance is noted on the current Development Plan approved for this location.

This recommendation is made subject to the following conditions:

1. This development of the subject property shall take place in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction activity on the site.

Representation – Ms. Rena Wiseman, attorney, was present on behalf of the appellant. She said that her client had read the staff's report, and would agree to the recommended conditions for approval.

Discussion – Ms. Meyer asked how our local regulations were more restrictive than the FEMA guidelines. Mr. Emmons replied that the FEMA regulations do not allow for construction below the identified flood elevation. However, our local regulations require construction to be two feet above the identified flood elevation, and to be at least 25' from the edge of the identified floodplain. He said that FEMA has applauded our local regulations, and that Lexington-Fayette County has been identified as a model for other communities in regard to our floodplain regulations.

Mr. Emmons said that the variance requested here was for the actual setback from the floodplain. This structure would not be in the floodplain, but is proposed to be closer than 25' from the floodplain. In this case, it is necessary for the structures to be closer to the floodplain due to the location of Hays Boulevard. The residence would not be within the floodplain. There are still some drainage improvements necessary in this 500-acre development.

Ms. Meyer asked what infrastructure was still needed to be completed in this development. Mr. Emmons replied that there is no threat from flooding for the structure in question. Ms. Wiseman replied that this structure would not be in either the "real floodplain" or the regulatory floodplain.

Ms. Moore asked what would be done if the appellant does not finish all of the subdivision improvements upstream of this location and only had, in essence, a partial approval from FEMA. Mr. Emmons replied that the variance is justifiable whether the other improvements are completed soon or ten years from now. Ms. Moore asked if this would be the case if the remaining improvements were never completed. Mr. Emmons replied that this would be so, even in the event the remaining improvements were not constructed.

Ms. Meyer asked if the necessary infrastructure was in place for this particular property. Mr. Emmons replied affirmatively, and said that the nearest storm water basin had been completed in this area.

Mr. Griggs asked about the variances for Ball Homes (V-2007-42, V-2007-43 and V-2007-44) for garages in front of residences that were over the required front setback. He said that one of the variances was granted to the same applicant as for this current request. He said that one of the variances might have been ignored, but he had asked the staff to research these three 2007 cases.

Ms. Wiseman objected to these cases being brought up in context of the current application, and she asked the Board to consider the present application alone. She felt this was extraneous information, and that it ought not to be considered. However, she also did have information to share about the three 2007 cases. She said that the three properties were on Arum Park, and that the variances were the result of a surveying error. The Board approved one of the variances, and denied the other two. With the assistance of the Division of Building Inspection, Ball Homes was able to modify the other two residences where the variances were denied. She said that those two homes each had a Certificate of Occupancy, which she could supply the Board, if they wished to see them.

Mr. Griggs said that did answer his question, but that the staff could find no record of these Certificate of Occupancy approvals, or of the houses being brought into compliance. He said that is why he asked the staff to inform the appellant of the need for this information. Ms. Wiseman said that there had been a clear mistake, and that the appellant had rectified the past mistakes with those two houses. She said that the current case involves completion of a regional detention basin, which would be done.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Moore, and carried unanimously (White absent) to approve **V-2012-27: BALL HOMES, LLC** – an appeal for a variance to reduce the required 25-foot distance from the floodplain to 12.5 feet in order to construct a single family residence in an Expansion Area Residential (EAR-1) zone, on property located at 3829 Castlebridge Lane, for the reasons provided by the staff, and subject to the recommended conditions.

- b. **V-2012-30: WILLIAM MERCER** - appeals for a variance to reduce the required front setback from 20 feet to 0 feet to allow parking in front of the residence in a Planned Neighborhood Residential (R-3) zone, on property located at 2806 Kasey Court (Council District 7).

The Staff Recommends: Approval of a variance to 3 feet for the addition of one off-street parking space, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare; should not alter the character of the general vicinity, nor cause a hazard or nuisance to the public. Approval of the variance will help to alleviate an existing situation of very limited on-street parking on Kasey Court.
- b. The pie shape of the subject lot, resulting in an unusually narrow property, is a special circumstance of the property that does not apply to most of the properties on Kasey Court. Further, Kasey Court is a "Y" cul-de-sac that offers few on-street parking opportunities – and such cul-de-sac designs are no longer permitted locally.
- c. Strict application of the 20' front setback requirement would force the appellant to abandon additional parking for this property altogether, as the built environment will not allow space for a driveway access to the side or rear of the house on the subject property.
- d. The lot lines and the location of the house and driveway were already in place when the applicant purchased the property. This variance request is therefore not a result of his actions since the adoption of the Zoning Ordinance, and there is no intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The additional paving shall be constructed in accordance with the submitted application and a revised site plan, with additional driveway pavement no more than 9' in width, beginning at least 3' behind the property/right-of-way line. This shall be shown on the revised site plan prior to issuance of any permits.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. At least one small ornamental tree shall be planted between the new driveway pavement and the property line of 2808 Kasey Court.
4. An Administrative Action Plat (Groves Point, Unit 2, Section 5, Block B) shall be submitted for Planning Commission approval prior to issuance of any permits for construction of the driveway.

Staff Report – Mr. Emmons said that the staff had recommended approval of a slightly different variance than had been requested by the appellant, from 5' to 3', instead of from 5' to 0' as requested. He said that he did not believe that the appellant was in opposition to the staff recommendation.

Representation – Mr. Hart Terrell, resident of 2806 Kasey Court, was present to represent the appellant, who was his landlord. Chairman Stout asked if the appellant had read and understood the staff recommendation for approval. Mr. Terrell replied affirmatively. Chairman Stout asked if the appellant would agree to abide by the four conditions recommended for approval. Mr. Terrell replied affirmatively once again.

Questions – Mr. Griggs asked if this would set a precedent for driveways on Y-shaped cul-de-sacs. He asked if the staff knew how many there were in the urban area. Mr. Sallee replied that the staff did not know this, but that they were permitted by the Subdivision Regulations for about a decade, and have been prohibited for the past 10-15 years. He said that there were more than usual in this particular neighborhood. He said that there might be as many as 40 of these types of cul-de-sacs in the entire community.

Mr. Griggs said that, if there were about 10 such lots on each of these cul-de-sacs, then he would be worried about a precedent for about 400 properties, where the front yard grass could basically be eliminated, if this variance were approved. Mr. Emmons replied that was why the staff recommended approval of a different variance than had been requested by the appellant. He said that the appellant would still be allowed to provide an additional parking space, but not to eliminate all of their front yard grass to do so. Mr. Sallee displayed an aerial photograph of Kasey Court on the overhead projector, and said that on one side of the street, there were only four existing lots; but on the southern side of the street, there were seven lots. The density of the homes on these Y-cul-de-sacs would need to be reviewed independently on all such variance requests. The four homes on the northern side of Kasey Court would not automatically have the same precedent, in the staff's opinion.

Ms. Meyer asked if permeable surfaces could be employed in such circumstances. Mr. Sallee said that the staff had discussed this with other applicants, but he was not sure that such a dialog had occurred with this appellant.

Mr. Griggs asked Mr. Terrell if they would be willing to consider a permeable surface for this driveway. Mr. Terrell said that they would not be opposed to considering that here, but that the overgrown tree has four-inch roots invading the neighboring property, with very shallow soils and clay underneath. He said that the "fanning" roots were the original impetus to seek approval for this change. He said that parking on the street has led to vehicle collisions in the past. He felt that this particular area was overbuilt, so they were seeking permission to solve two problems at one time.

Ms. Meyer asked if the landlord would be willing to install permeable pavers. Mr. Terrell said that he had not discussed this with his landlord, and that their preference would be to install a concrete surface. He was not sure of the cost implications this might pose to his landlord. Mr. Terrell asked if Ms. Meyer was requesting only paving stones. She replied that she had visited the new Agri-science school on Leestown Road, and noted that its parking lot was made totally of pervious pavers. She saw a truck on the drive to today's meeting advertising "permeable concrete." She believed that there would be a cost difference, but she was not sure of what that difference would be for situations such as this.

Mr. Glover said that he is not sure of the actual variance request, having looked at the drawing in the members' packets. Mr. Sallee displayed a modified site plan on the overhead projector, which illustrated the effect of the staff recommendation on this site. Mr. Glover asked if the proposal was to pave the shaded area on the graphic mailed in their packet. Mr. Emmons replied that that was the petitioner's original request; but following review by the staff, that graphic is not consistent with their recommendation on this request. The staff is agreeable to allowing one additional parking space; but in their view, the amount of parking proposed was excessive. The graphic shown on the overhead projector would still require some green space to remain between the subject driveway and the one on the adjoining property. Mr. Glover asked if the neighboring property owner would submit an application for a variance to pave their front yard. Mr. Emmons thought that the precedent would be fairly limited; noting that that was another reason the staff had a modified recommendation.

Ms. Moore asked if the adjoining property had a double driveway. Mr. Terrell replied that it did not. Mr. Emmons displayed an aerial photograph of the homes on Kasey Court on the overhead projector, and highlighted the subject property and the adjoining property.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover and carried unanimously (White absent) to approve **V-2012-30: WILLIAM MERCER** – an appeal for a variance to reduce the required front setback from 20 feet to 3 feet to allow parking in front of the residence in a Planned Neighborhood Residential (R-3) zone, on property located at 2806 Kasey Court, for the reasons provided by the staff, and subject to the recommended conditions, including adherence to the revised site plan shown on the overhead projector at this meeting.

- B. **Transcript or Witnesses** - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2012-31: CAMPUS RENTAL PROPERTIES** - appeals for a variance to reduce the required 20-foot setback for a sign to 12 feet in a Planned Neighborhood Residential (R-3) zone, on property located at 401 Woodland Avenue (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare; should not alter the character of the general vicinity, nor cause a hazard or nuisance to the public. In addition, granting the variance to replace the existing sign 12 feet from the right-of-way should not have any effect on the sight triangle in this location.
- b. The location of the existing sign and the new large utilities on this site are special circumstances that apply to this property that do not generally apply to other properties in the vicinity.
- c. Strict application of the setback requirement will require the sign to be placed in an existing landscaped area near the building, making the sign less visible to the public due to numerous existing obstructions near the corner of the existing apartment building.
- d. The existing sign was placed on the property prior to its acquisition by Campus Rental Properties and utility upgrades in this area that were completed about two years ago. Therefore, this variance request is not a direct result of the appellant's own actions since the adoption of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The sign shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. Should a field investigation determine that the proposed sign will decrease the visibility of the sight triangle in this location, the Division of Building Inspection may require the sign to be set back to a safe minimum distance.

Representation – Mr. John Strom, attorney, was present on behalf of the appellant. Chairman Stout directed that the Board would first hear any objections to this appeal.

Citizen Comments – Ms. Diane Lawless, 3rd District Councilmember, was present to object to this request. She said that this applicant had signs that were posted for 365 days each year along their properties on Euclid Avenue, High Street, Maxwell Street, and in the Elizabeth Street and Waller Avenue area, many of which are already rented. She said that they have different web-sites displayed as well, which usually refer one back to a single web-site. This had posed a struggle to enforcement efforts, and to the neighborhoods in the area. Previously, these signs had been enforced by Building Inspection; but more recently, this duty had been transferred to Planning. In the future, such violations would be considered a civil penalty. Ms. Lawless said that the Urban County Council is also reviewing the issue of such signs advertising multiple rental properties year round.

Ms. Lawless said that she opposed the website that was to be advertised on the proposed sign. She asked the Board to at least consider postponement of this proposal, until such time as the Council reviews the issues associated with these types of signs. She said that Euclid Avenue and other streets have a proliferation of these signs in residential neighborhoods, and that they add to the unsightly conditions in some of these neighborhoods. She said that the proliferation of these signs is atrocious and tacky in residential neighborhoods. She requested postponement until the Council deals with the Zoning Ordinance revisions.

Ms. Lawless said that some of these signs had been posted on a single property for years, that there are two or three companies that are worse than others, and this appellant is one of those companies. She said that these signs all advertise the same web-site.

In closing, Ms. Lawless thanked the Board for their volunteer service.

Appellant's Presentation – Mr. Strom stated that this case is not about the small temporary signs described by Ms. Lawless. Instead, it is to permit the sign indicating that this is the location of the Woodland Village Apartments. It would be primarily for parents of students and for emergency vehicles accessing the site. He said that the need for the new sign was due to the recent installation of large utility poles along the property frontage, which had diminished the view of the former sign. He said he had pictures of the existing sign and the utility poles, if the Board wished to view them.

Discussion – Mr. Stout said that he had visited the site, and that he did not need the benefit of any pictures, and that he was not opposed to the installation of the new sign. He did understand Ms. Lawless' concerns about the temporary signs, but this sign did not seem to hinder anyone in the area. He said that he did not see a problem with the proposed sign.

Ms. Meyer asked if the Board could view a picture of the proposed sign. Mr. Emmons displayed a drawing from the appellant's application of the existing Woodland Village sign and the proposed sign. Mr. Strom displayed a larger version of the proposed sign on the overhead projector.

Mr. Glover asked how much larger the proposed sign was from the existing sign. Mr. Strom replied that the face of the new sign was actually smaller than the existing sign, but that the base holding up the sign would be considerably larger. Mr. Glover asked how much larger the new base would be. Mr. Emmons replied that the existing sign is 17 square feet in area, and the proposed sign and structure is to be 25 square feet. He said that the existing sign is on 4' by 4' posts. Mr. Emmons said that until 2009, the frame around a monument sign was counted in the allowable sign size. Since then, the frame around the sign does not count toward the size limitation. Mr. Emmons said that the allowable size for this monument sign is 40 square feet. He said that the structure was highlighted for review by the Board on the overhead projector. Mr. Strom displayed a photo of the sign at the Park Hill Apartments, which is very similar to the one requested at this location.

Mr. Emmons explained that the reason for this appeal was due to the sign's location. The replacement sign structure was to be located only 12' from the right-of-way, but the Zoning Ordinance requires a 20' setback in this zone.

Ms. Meyer asked Ms. Lawless if her objection was to the signs located in the neighborhoods advertising the rent charged to live in these properties. Ms. Lawless said that is part of her objection, but that it also involves off-site advertising of properties, including the web-site information on the signs. Ms. Meyer conceded that a web-site was proposed for the new sign, but that the address is also to be on the sign, and that the Woodland Village name was significant for this proposed sign. Ms. Lawless said that the

purpose of these signs was to advertise these off-site properties.

Mr. Griggs asked for more specifics about the objections. Ms. Lawless replied that the size, the location, the address and the web address on the proposed sign were all objectionable. Mr. Griggs asked what would be accomplished by the future text amendment she mentioned earlier regarding this type of sign. Ms. Lawless said that the responsibility for sign enforcement would be moved from the Division of Building Inspection to Planning. She said that the sign in question should at least have the address of the property on it. She added that the rental signs she described would also be targeted.

Mr. Griggs asked if the Building Inspection or Code Enforcement staff had been lax with these signs. Ms. Lawless said that it was not Code Enforcement, but Building Inspection that had been lax. Mr. Griggs asked what was illegal about the rental signs. Ms. Lawless replied that it is impermissible to have a "For Rent" sign on a property that is not for rent, and it is also illegal to advertise a unit on one property from another location, which is what has been done in this area. She said that neighbors had provided documentation of such offenses; but as a criminal offense, they usually had a very low priority. She said that the hope is that, as a civil citation, it would be improved.

Mr. Griggs asked if the sign regulations were to change, if the sign in question would be grandfathered, and not removed. Mr. Emmons said that the location of the sign is in question. The staff did not review the copy of the proposed sign. The existing and proposed signs were to be 12' from the street, whereby the Zoning Ordinance required a 20' setback for this sign.

Mr. Glover asked why the staff was counting the sign's frame into the 25 square-foot calculation. Mr. Emmons replied that the staff was trying to identify that the entire sign structure was increasing in size. The existing sign is 17 square feet in size, but it has no frame around it. The proposed sign is to be only 13 square feet in area, but the structure is increasing in size from the existing sign. This is the reason that the variance is necessary. Mr. Glover clarified that since the existing sign is also 12' from the right-of-way, then a newer, more permanent structure is driving this request. Mr. Emmons agreed.

Ms. Lawless asked if the existing sign is in compliance with the Ordinance. Mr. Emmons said that a development plan was approved for this location in 1976, adding that he could not find that a sign permit was ever issued for the existing sign; but he believed that the sign dated to the construction of the apartments. He said that there was no record of a prior variance for the existing sign either. Ms. Lawless asked if the current sign was out of compliance, to which Mr. Emmons replied that he was unsure. Mr. Strom said that his client had purchased the property in 1997, and the existing sign was in place on the property at that time. He said that the only change to the sign was merely to update the phone number on it.

Ms. Moore asked what the sign setback requirement was in 1977. Mr. Emmons said that the 1975 Zoning Ordinance would have required the sign to be 20' back from the right-of-way at that time. Ms. Moore surmised that the sign probably was illegal. Mr. Emmons said that there was no evidence as to whether or not it was placed in its location legally.

Chairman Stout asked Mr. Strom whether his client was in agreement with the three conditions recommended by the staff for approval of the variance. Mr. Strom replied that his client had read the conditions, and was in agreement with them.

Action – A motion was made by Mr. Glover and seconded by Mr. Stumbo, to approve **V-2012-31: CAMPUS RENTAL PROPERTIES** – an appeal for a variance to reduce the required 20-foot setback for a sign to 12 feet in a Planned Neighborhood Residential (R-3) zone, on property located at 401 Woodland Avenue based upon the reasons provided by the staff, and subject to the conditions recommended by the staff.

Discussion – Mr. Stumbo thanked Ms. Lawless for attending the hearing, and sharing the problems associated with the signs up and down Euclid Avenue. He said that he viewed this proposal as a "replacement" sign, but that the other signage issues mentioned today were of a much greater magnitude. He wished Ms. Lawless and the Council much success in dealing with those issues in the future.

The votes on the motion were as follows:

Ayes: Glover, Moore, Stout, Stumbo

Nays: Griggs, Meyer

Absent: White

The motion carried, 4-2.

Mr. Strom thanked the Board for their consideration.

Note: Following this case, the Board returned to **C-2012-28: BRENDA TOLLETT / BVC HOLDING, LLC** (above).

D. **Conditional Use Appeals**

There were none remaining.

E. **Administrative Review**

1. **AC-2012-29: JEFF SPENCER** - appeals for an administrative review to determine that hand-washing of vehicles by staff constitutes a self-serve car wash; and if so determined, a conditional use permit to allow the car wash in a Neighborhood Business (B-1) zone, on property located at 1820 Bryan Station Road (Council District 6).

The Staff Recommends: Disapproval of the Administrative Appeal, for the following reasons:

- a. Self-service car washing establishments are an allowable conditional use in the Neighborhood Business (B-1) zone. However, the applicant does not use any type of automated equipment in the operation of the car washing business. A client will drive his/her automobile to the parking lot, drop it off for cleaning, and the appellant manually cleans and details the car using a vacuum, a water hose, soap, buckets, and rags. Nothing about this type of car washing operation can be construed as a self-service car wash; therefore, it is not substantially similar to the allowable conditional use in the B-1 zone.
- b. Both full-service car washes and self-service car washes are allowed in the B-3 and B-5P zones as principal permitted uses. Car washes are considered an auto-related service and are allowed in zones with a strong orientation to major roads. The B-3 and B-5P zones are generally located on major arterial roads and are generally more insulated from residential areas by other more neighborhood-friendly zones (such as P-1 or B-1). Thus, the typical neighborhood nuisance factors of excess traffic, outdoor music and other operational noises created by a full-service car washing establishment can be avoided.

The Staff Recommends: Disapproval of the Conditional Use request, for the following reason:

- a. The proposed car washing establishment is not a self-service car wash and is therefore not an allowable conditional use at the requested location (1820 Bryan Station Road) which is zoned Neighborhood Business (B-1).

Representation – Mr. Jeff Spencer, appellant, was present, and asked the Board to grant approval of his conditional use for a car wash at 1820 Bryan Station Road.

Chairman Stout told the appellant that the staff had recommended disapproval of his request, and that the staff would present their report at this time.

Staff Report – Mr. Emmons presented the Staff Report for this application. He said that the proposed use is at the rear of the Hi-Acres Shopping Center. The reason for this appeal is that there was a complaint filed with Zoning Enforcement about the appellant's business. Mr. Sallee displayed an aerial photograph of the shopping center on the overhead projector.

Mr. Emmons said that in Neighborhood Business (B-1) zones such as this, self-service car washing establishments require a conditional use permit. He said that the appellant's activity is not self-service, but full service care, where persons use buckets and rags to manually wash the vehicles. He said that

full-service car washes are first permitted in the Highway Service Business (B-3) zone.

Mr. Emmons said that the staff could not find that the appellant's activity was substantially similar to a self-service car wash, and that there are two types of self-service facilities. One is comprised of bays where a person uses a wand to wash their vehicle; and the other is fully automated, where machines do all the work, usually as an accessory use to a gas station. Mr. Emmons said that the staff recommended disapproval of the Administrative Appeal, for this reason. He concluded by saying that the staff also recommended disapproval of the requested conditional use permit.

Appellant's Presentation – Mr. Spencer said that having an individual wash the car as being "self-service" is a matter of interpretation. He said that he could not find an objector in this neighborhood to his use. He said that there is no adverse surface water drainage associated with his use, and that there is no traffic issue or problem created by his use.

Mr. Spencer said that in the past 30 days, there have not been any complaints lodged. He said that there are several places in town that wash cars in this fashion.

Discussion – Mr. Griggs asked if Mr. Spencer had a staff to perform this work. He introduced his employee, and said that the cleansers he utilizes are all bio-degradable. Mr. Griggs asked how big this use might become. Mr. Spencer said that usually only one car is washed at any one time. He said that he owns the American Merchants Mall in Hi-Acres, and he offered this service primarily to his store's customers, while they are shopping in his store. He said that there is no lining up of vehicles involved. A few vehicles are actually picked up by his staff and brought to this location so they can be washed.

Mr. Stumbo asked how many cars are washed here on a typical day. Mr. Spencer's employee answered that about seven or eight were washed at this location in a typical day. Mr. Spencer added that this is during normal store hours, from about 9:00 or 10:00 AM until 5:00 or 6:00 PM.

Mr. Glover asked if this was being done indoors or outdoors. Mr. Spencer replied that this was being done outdoors, in the back of the shopping center.

Mr. Griggs asked how the complaint came to be. Mr. Spencer replied that a neighbor thought that a new car wash was going to be built. He said that was the reason that they were here today. He thought that the conditions of this use under the B-1 zone were being met with their use.

Mr. Spencer said that one neighbor was present to speak in favor of this application.

Citizen Comments – Mr. James Griffith, residing across the street from this location on St. Anthony Drive, was present to speak in favor of this application. He said that, from his front porch, he could look directly into the site, and that he had not noticed any problems with this business. He said that there had not been any issue with loud music playing, and that he couldn't even hear casual conversations at this location.

Chairman Stout asked Mr. Griffith how he would feel if twenty cars were lined up for service. Mr. Griffith said that that would not bother him at all. He said that when the Merchants Mall opened, he spoke with Mr. Spencer about the need to keep the parking lot clean. Mr. Griffith said that the lot had never been as clean as it was with Mr. Spencer's use. He said that when Ace Hardware was there, trash was always blowing into his yard. Mr. Griffith said that Mr. Spencer had kept the parking lot well maintained.

Chairman Stout asked for the rationale for the difference in the B-1 and B-3 zones. Mr. Emmons described the B-1 zone as being in closer proximity to neighborhoods and residences. He said that, for example, this shopping center was surrounded by residential zoning and uses. He said that the Highway Service Business (B-3) zone was generally found along major arterial roads. He said that it is a more intense business zone. He said that a B-3 zone is usually more insulated from residential uses, because they are along major corridors. He said that car wash uses have been in the Zoning Ordinance since 1973. He said that there are usually nuisance factors such as noise and traffic associated with full-service car wash establishments, which is why they are more restricted. He said that the difference in regulation is not a result of the size of the operation, but rather, the result of the activity of the operation.

Mr. Griffith said that the customers of the Dollar General store in Hi-Acres make more noise than Mr. Spencer's operation. Chairman Stout said that the difference in his mind is the B-1 restrictions weighed against those of the B-3 zone. He said that this might be one of those cases where the Board sets a precedent. He did not see how this appeal could be approved.

Mr. Griggs said that he worried also about the precedent this might set, and that Ms. Boland was similarly worried.

Mr. Glover asked the staff if the failure of this being listed in the B-1 zone, as opposed to the listings in the B-3 and B-5P zones, was the primary concern of the staff. Mr. Emmons replied that the concern goes beyond the listing of uses, as the nuisance factor was also part of the equation.

Mr. Glover said he was trying to find a bright line between these uses. He said that this use shouldn't be penalized merely because it is not listed in the B-1 zone. Mr. Emmons replied that it is a prohibited use in the B-1 zone because full-service car wash establishments are permitted in B-3 and B-5P zones, but only self-service car washes are permitted in the B-1 zone. He said that there were no provisions in the B-1 zone to allow this use. Mr. Glover asked the staff if they had determined that this use was a full-service car wash establishment. Mr. Emmons replied in the affirmative.

Mr. Spencer asked how this use could be permitted in a B-1 zone. Mr. Emmons replied the standard type of self-service car washes that he had mentioned earlier are permitted, and said that either of these could be requested. Mr. Emmons said that only self-service car washes could be permitted in the B-1 zone, of either the wand variety operated by hand, or by the machine-wash facilities.. Mr. Spencer replied that machines could wash cars in the B-1 zone, but he could not.

Mr. Griffith said that there would be more disturbances from self-service car wash establishments with bays where folks turn up their radios while they wash their vehicles, than from this operation. Chairman Stout thanked Mr. Griffith for his support, but said that this request goes beyond those concerns. He said that the Board is trying to prevent a future problem "down the road" for the community.

Mr. Stumbo asked if Mr. Spencer's business would be allowable in a B-3 zone. Mr. Emmons replied in the affirmative. Mr. Stumbo asked Mr. Spencer if he could find space in a B-3 location. Mr. Spencer replied that he understood the precedent issue, but that over 50 letters were sent to neighbors about today's hearing, and there had not been one complaint lodged since the letters were mailed. He said that the parking lot is quite large, and that he did not see a huge down side to allowing his business to operate at this location, which is somewhat secluded. He did not think it was too much to ask another businessman to come before the Board if he wanted to operate such a car wash in a similar fashion. He felt he met all the City's requirements and had made a strong effort to be heard today, for a chance to improve the community.

Ms. Moore said that, as a Board member, she felt it important to make an interpretation on this issue. She said that this use is not a "self-service" car wash, and that Mr. Spencer could ask for a text amendment to make this type of limited car wash an allowable use in the B-1 zone. Also, he could request a zone change for the site. She said she could not make this interpretation in the appellant's favor.

Mr. Griggs said that Ms. Boland had some findings of approval to offer the Board. They were displayed on the overhead projector for viewing:

"Findings for Approval:

So long as this activity has no more than two persons working at this location, and no music is being played to disturb surrounding residences, the appellant's small car washing operation, washing of only one car at a time is no more intensive, and is more similar to, a self service car wash which is permitted in this zone."

Mr. Spencer asked Mr. Griffith if there was any loud music played behind the shopping center. Mr. Griffith replied that unless he goes out on his front porch, he doesn't know that they are even on the property.

Chairman Stout said that the Board was reviewing whether this use was appropriate in the zone in

which it is located, versus another possible zone. Mr. Glover added that many of the Board members seemed to be in favor of this use and that they were interested in being of help to Mr. Spencer.

Chairman Stout asked the staff if they had any closing comments. Mr. Sallee replied that the Board had two sets of findings available to them on this case, to cover either decision they might consider.

Mr. Stumbo said that since there were two sets of findings, that this might prove to be a good compromise to permit a local small business, many of which can sometimes struggle. He said he could support approval of this appeal.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Glover to approve **AC-2012-29: JEFF SPENCER** – an appeal for an administrative review to determine that hand-washing of vehicles by staff constitutes a self-serve car wash; and a conditional use permit to allow the car wash in a Neighborhood Business (B-1) zone, on property located at 1820 Bryan Station Road, based upon the findings provided by legal counsel.

The votes on the motion were as follows:

Ayes: Glover, Griggs, Stout, Stumbo

Nays: Meyer, Moore

Absent: White

The motion carried, 4-2.

- IV. **BOARD ITEMS** - The Chair announced that he would miss about 4-6 weeks of meetings, beginning in late July, due to an upcoming medical procedure. The Board members and staff wished him well.
- V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time.
- A. House Bill 55 Training Opportunity – Mr. Sallee announced that there would be an APA audio conference on Wednesday, June 6, 2012 from 4:00 until 5:30 in the Division of Planning Conference Room on the 7th floor of the Phoenix Building. The title of this training session is “Adapting Cities to Climate Change,” and will count toward 1.5 hours of training credit.
- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be June 8, 2012.
- VII. **ADJOURNMENT** – There being no further business, the Chair declared the meeting adjourned at 2:30 PM.

Louis Stout, Chairman

James Griggs, Secretary